



INTERIOR BOARD OF INDIAN APPEALS

Estate of Comer Fast Eagle

16 IBIA 40 (03/03/1988)

Related Board case:
15 IBIA 134



United States Department of the Interior

OFFICE OF HEARINGS AND APPEALS
INTERIOR BOARD OF INDIAN APPEALS
4015 WILSON BOULEVARD
ARLINGTON, VA 22203

ESTATE OF COMER FAST EAGLE

IBIA 87-40

Decided March 3, 1988

Appeal from an order denying petition for rehearing issued by Administrative Law Judge Elmer T. Nitzschke in Indian Probate IP RC 154Z 86.

Affirmed.

1. Indian Probate: Wills: Undue Influence

To invalidate an Indian will on the grounds of undue influence, it must be shown: (1) that the decedent was susceptible of being dominated by another; (2) that the person allegedly influencing the decedent in the execution of the will was capable of controlling his mind and actions; (3) that such a person did exert influence upon the decedent of a nature calculated to induce or coerce him to make a will contrary to his own desires; and (4) that the will is contrary to the decedent's own desires.

2. Indian Probate: Wills: Testamentary Capacity: Generally

To invalidate an Indian will for lack of testamentary capacity, it must be shown that the decedent did not know the natural objects of his bounty, the extent of his property, or the desired distribution of that property. Further, it must be shown that this condition existed at the time of execution of the will.

3. Indian Probate: Wills: Testamentary Capacity: Alcohol

Long-term abuse of alcohol, per se, does not deprive a testator of testamentary capacity. Rather, it is the testator's condition at the time he executed his will that is decisive. Therefore, unless a testator is shown to have been intoxicated at the time he made his will or to have suffered permanent alcohol-induced brain damage, the fact that he drank excessively is not evidence that he lacked testamentary capacity.

APPEARANCES: Carl Fast Eagle, pro se.

OPINION BY ADMINISTRATIVE JUDGE VOGT

Appellant Carl Fast Eagle seeks review of an April 8, 1987, order denying rehearing issued by Administrative Law Judge Elmer T. Nitzschke in the estate of Comer Fast Eagle (decedent). For the reasons discussed below, the Board affirms that order.

Background

Decedent, an unallotted Oglala Sioux Indian of the Pine Ridge Reservation, was born on December 1, 1926, and died on November 28, 1985, in Pine Ridge, South Dakota. He left a will, executed on September 28, 1984, in which he devised all his property to Myrtle Fool Head, his cousin, and Lois Lays Hard, who was unrelated to him. Appellant is decedent's nephew and would share in decedent's estate if his will were to be found invalid. ^{1/}

Judge Nitzschke held hearings to probate decedent's trust estate on August 12 and November 3, 1986, at Pine Ridge, South Dakota. At the hearings, appellant contested decedent's will on the grounds that decedent was subjected to undue influence by the will beneficiaries. Witnesses at the November 3 hearing testified that decedent had a drinking problem and often drank with Lois Lays Hard. Some testified that Ms. Lays Hard encouraged decedent's drinking and influenced him to spend his money on alcohol for their drinking sessions.

With respect to the evidence concerning undue influence, Judge Nitzschke made the following findings:

1. It does not appear that the decedent was easily susceptible to domination. [Appellant] himself testified that the decedent was "* * * a stubborn man * * *". He's the type of person you can't - you know - tell him what to do * * *" (Hearing Tr. at p. 13). Although the decedent's sister greatly opposed the decedent's relationship with Lois Lays Hard and attempted to interfere by using both physical force and legal action, the decedent did not submit (See Hearing Tr. Ex. P-1). When the decedent was diagnosed in June of 1985, as having a brain tumor and surgery was recommended, he advised the doctor he preferred to let nature take its course (See Hearing Tr. Ex. P-2).

2. While it is true that the decedent did party with and buy alcohol for Lois Lays Hard, it was not something he did only with and for her. The decedent did use and abuse alcohol not only with Ms. Lays Hard, but with others. While a number of witnesses

^{1/} Appellant was determined to be an heir of his mother, Martha White Plume, decedent's subsequently deceased sister, in Indian Probate IP RC 187Z 86.

stated when asked that Ms. Lays Hard was "exerting an improper and undue influence" on the decedent, they did not give any examples other than the fact that they were seen together drinking.

3. It may be true that Ms. Lays Hard did exert influence upon the decedent as to the use of alcohol but it does not necessarily follow that this resulted in the decedent making a will contrary to his own desires.

4. Decedent's sister (his sole heir at law) was attempting to force him to do things he did not wish to do during those years after his mother died. They therefore were not on the best of terms. Decedent left his property to his cousin and girlfriend and indicated to the person who assisted him with his will that these were his wishes.

(Order Approving Will and Decree of Distribution at 3).

Judge Nitzschke therefore found that appellant had not shown decedent was subject to undue influence at the time he prepared his will. The Judge also found that the evidence concerning decedent's abuse of alcohol, and other evidence concerning decedent's physical and mental condition, was insufficient to show that he lacked testamentary capacity when the will was executed. Accordingly, on January 13, 1987, Judge Nitzschke approved decedent's will.

Appellant filed a notice of appeal to the Board from Judge Nitzschke's January 13 order, which was received by the Board on March 10, 1987. The Board dismissed the appeal as premature because appellant had not first sought rehearing by Judge Nitzschke, as required by 43 CFR 4.241 and 4.320. Estate of Comer Fast Eagle, 15 IBIA 134 (1987). Appellant filed a copy of his notice of appeal with Judge Nitzschke, who treated it as a petition for rehearing. The Judge denied the petition on April 8, 1987, because appellant did no more than allege that decedent was subject to undue influence and lacked testamentary capacity, producing nothing to refute Judge Nitzschke's findings.

Appellant filed a second notice of appeal from Judge Nitzschke's April 8 order denying rehearing, which the Board received on June 11, 1987. No briefs were filed on appeal.

Discussion and Conclusions

Appellant makes no further allegations in his second notice of appeal. He did not file a brief. The Board therefore treats the allegations contained in his first notice of appeal as the arguments he intends to make on appeal, *i.e.*, that decedent was subject to undue influence and lacked testamentary capacity when he executed his will.

As Judge Nitzschke noted, the burden of proof as to undue influence or lack of testamentary capacity is on those contesting the will. E.g., Estate of Leon Levi Harney, 16 IBIA 18 (1987). The Board has carefully reviewed the record and finds no reason to disturb Judge Nitzschke's finding that appellant failed to meet that burden.

[1] To invalidate an Indian will on the grounds of undue influence, it must be shown:

(1) that the decedent was susceptible of being dominated by another; (2) that the person allegedly influencing the decedent in the execution of the will was capable of controlling his mind and actions; (3) that such a person did exert influence upon the decedent of a nature calculated to induce or coerce him to make a will contrary to his own desires; and (4) that the will is contrary to the decedent's own desires.

Estate of Thomas Longtail, Jr., 13 IBIA 136, 138 (1985); Estate of Harney, 16 IBIA at 21.

Appellant produced no evidence whatsoever to show that either of the will beneficiaries, or any other person, exerted such influence on decedent. Rather, evidence of influence upon decedent was limited to testimony that Lois Lays Hard encouraged decedent to drink with her and to spend his money on alcohol for their drinking parties. This falls far short of evidence that she induced him to make a will contrary to his own desires.

[2] To invalidate an Indian will for lack of testamentary capacity, it must be shown that the decedent did not know the natural objects of his bounty, the extent of his property, or the desired distribution of that property. Further, it must be shown that this condition existed at the time of execution of the will. E.g., Estate of Virginia Enno Poitra, 16 IBIA 32, 36 (1988), and cases cited therein.

[3] Long-term abuse of alcohol, per se, does not deprive a testator of testamentary capacity. Rather, it is the testator's condition at the time he executed his will that is decisive. Therefore, unless a testator is shown to have been intoxicated at the time he made his will or to have suffered permanent alcohol-induced brain damage, the fact that he drank excessively is not evidence that he lacked testamentary capacity. See Estate of William Bigheart, Jr., IA-T-21 (Aug. 8, 1969); Estate of John J. Akers, IA-D-18 (Feb. 26, 1968), aff'd, Akers v. Morton, 333 F. Supp. 184 (D. Mont. 1971), aff'd 499 F.2d 44 (9th Cir. 1974).

The will scrivener testified that decedent did not appear to have been drinking either on the day she first talked to him about his will or on the following day when she returned with the typed will for him to sign. She stated that decedent was clear in telling her who he wanted to receive his property and that he affirmed his intention when she read the will back to him that day and again the following day. Her testimony indicates that

decendent was competent to execute a will on September 28, 1984. Appellant produced no evidence to refute the testimony of the will scrivener.

Therefore, pursuant to the authority delegated to the Board of Indian Appeals by the Secretary of the Interior, 43 CFR 4.1, Judge Nitzschke's April 8, 1987, order denying rehearing is affirmed.

//original signed
Anita Vogt
Administrative Judge

I concur:

//original signed
Kathryn A. Lynn
Chief Administrative Judge